

Discussion Outline/Rough Draft**Revised: June 3, 1998****WORK-in-PROGRESS**

WATER TRANSFER ELEMENT - POLICY FRAMEWORK of the CALFED Bay-Delta Program

Purpose: To provide a policy framework to facilitate and encourage a properly regulated and protected water market to move water between users, including environmental uses, on a voluntary and compensated basis.

1. INTRODUCTION

The policy framework is designed to achieve improvements in the efficiency of the water transfer process, and to facilitate the further development of a statewide water transfer market. Because water transfers can impact third parties (those not directly involved in the transaction) and/or local groundwater or environmental conditions, the policy framework will also be designed to provide protection from such impacts.

Water transfers are a daily occurrence in California. We constantly 'transfer' water that falls in the form of rain and snow via rivers and canals and underground aquifers to urban, environmental, and agricultural water uses throughout the state. However, the term 'water transfers' has come to define the *physical movement of water between users* on a voluntary and compensated basis. For instance, a water rights holder in the Sacramento Valley voluntarily sells water to a water user in the San Joaquin Valley who is willing to pay for it. As the CALFED program strives to achieve its multiple objectives, there will be an expanded role for transfers as part of the Bay-Delta solution.

Every year, hundreds of thousands of acre-feet are transferred or exchanged between willing parties. Most of these transfers consist of in-basin exchanges or sale of water among Central Valley Project (CVP) or State Water Project (SWP) contractors. While generally, these transfers have been successful, they have raised concerns regarding adverse impacts to other water users, to rural community economies and to the environment. In addition, they have highlighted contradictory interpretations of state law, the lack of reliable ways to transport the transferred water, and complicated permitting and approval processes. Before the value of water transfers as a management tool can be fully realized, these problems need to be addressed. The major problems can be characterized as:

- environmental, economic, and water resource protections;
- technical, operational, and administrative rules; and
- wheeling through and access to state and federal conveyance facilities.

The CALFED Program recognizes that water transfers already are an important part of the California water management landscape and are valuable in the effort to improve water supply reliability, water use efficiency, water quality and the aquatic ecosystem. CALFED also recognizes that water transfers can have adverse impacts as well. CALFED actions to reduce conveyance constraints or to facilitate cross-Delta transfers could potentially exacerbate adverse impacts associated with water transfers.

Transfers can provide an effective means of moving water between users on a voluntary and compensated basis, as well as a means of providing incentives for water users to implement management practices which will improve the effectiveness of local water management. Transfers can also provide water for environmental purposes in addition to the minimum instream flow requirements.

However, the annual volume of transfers will still be dependent on locally developed agreements and assurances. Local governments along with a variety of public interests will necessarily be part of the analysis, review and decision making of specific transfer proposals.

1.1 The Role of Water Transfers in Water Management

Active management of California's water resources is necessary to meet the State's numerous water resource benefits - from flood control to recreation and from instream flows for fish to water for agriculture. Many tools are available to help manage our water, such as dams, reservoirs, canals, and pumps. Water conservation, another important water management tool, also plays an ever-growing role. Less obvious is the utility of such tools as the CALFED Ecosystem Restoration Plan Program and the Levee Integrity common program in the management of this resource. Water transfers, the physical movement of water between users, also provide a valuable method of water management. Though, it is important to remember that *water transfers do not create water* themselves. Rather, they allow for the *movement* of water between various uses.

As such, water transfers primarily have two water management functions (both of which function by moving water made available through a number of methods including but not limited to: conservation, conjunctive use, land fallowing, and reservoir re-operation):

- To provide a local entity with a temporary source of water during drought conditions when other sources of water are constrained. In this manner, the transfer helps improve water supply reliability for the buying region. Typically, such water transfers would be for short periods of time, not occurring every year; or,
- To augment existing sources of water to meet existing or projected unmet demands. In this manner, the transfer provides a new water supply to a local buying entity. Typically, a water transfer of this type would be a long-term, annual reallocation of water.

In addition to these primary functions, transfers provide other benefits to water management. For example they can:

- help reduce the mismatch between water supply and demand;
- provide a short-term method to move existing supplies from one location to another while other facilities are being constructed (i.e., new conveyance, surface storage, conjunctive use);
- reduce the level of need for new surface storage;
- aid in moving water from new facilities to various users throughout the state, including in-basin needs, instream flows for the environment, and exports, and
- provide water quality benefits (though degradation of water quality can also occur).

Water transfers are not efficiency measures per se but water transfers may encourage more efficient use of water and produce revenue which can be applied to investments in efficiency improvements. It is not a CALFED objective to increase the economic efficiency of water in the sense of causing water to move from relatively lower value uses to relatively higher value uses per unit of water. However, a more efficient water transfer market should result in some level of increased economic efficiency in the use of water as water gravitates by market force to higher value uses.

1.1.1 Relationship to Conjunctive Management and Surface Storage

Water transfers do not operate in a vacuum. A water transfer is merely an action to move water from one user or water rights holder to another. It is the source of the water being transferred that primarily differentiates between various water transfers. One potential source for transferrable water is water stored in surface or subsurface storage facilities.

The CALFED Bay-Delta Program views appropriate and effective integration of groundwater and surface water as an essential component of water management. Local development of conjunctive use facilities and modified operations of existing reservoirs can generate water that can be transferred to other beneficial uses in the Bay-Delta system. However, water transfers do not wholly substitute for needed increases in new water supply within the Bay-Delta system.

(Expand this discussion and linkage to storage/conveyance)

1.2 Water Transfer Law and Policy, State and Federal

Both State and federal law contain provisions that authorize, acknowledge, or support water transfers. In the past five years, important policy on water transfers has been established or reaffirmed at both the State and federal levels.

In his water policy speech in April of 1992, Governor Wilson reiterated the State's support for use of water transfers and the water transfer market, and described five criteria which transfers must meet:

First: Water transfers must be voluntary. And they must result in transfers that are real, not just paper. Above all, water rights of sellers must not be impaired.

Second: Water transfers must not harm fish and wildlife resources and their habitats.

Third: We need to assure that transfers will not cause overdraft or degradation of groundwater basins.

Fourth: Entities receiving transferred water should be required to show that they are making efficient use of existing water supplies, including carrying out urban Best Management Plans or Agricultural Water Efficiency Practices.

Fifth and finally: Water districts and agencies that hold water rights or contracts to transferred water must have a strong role in determining what is done. The impact on the fiscal integrity of the districts and on the economy of small agricultural communities in the San Joaquin Valley can't be ignored . . . any more than can the needs of high value-added, high tech industries in the Silicon Valley.

In addition to the Governor's policy, both California law and federal law include provisions that authorize and acknowledge transfers as reasonable and beneficial uses of water. California Water Code section 109 says in part: "It is hereby declared to be the established policy of this state to facilitate the voluntary transfers of water and water rights ...".

Water Code sections 386, 1702 and 1706 codify what is commonly referred to as the "no injury" rule on water transfers. While the practical application of these provisions is not always clear, they do establish the principle that water transfers may not injure other legal users of water or the environment.

Water Code sections 386 and 1725 establish that, at least as to transfers which must be submitted to the State Water Resources Control Board, the Board must make a finding, as part of an approval of a transfer, that the transfer will not injure any legal user of water, will not have an unreasonable affect on fish, wildlife or other instream beneficial uses, and will not unreasonably affect the overall economy of the area from which the water is being transferred.

Water Code sections 484 and 1725 define transferable water as water that would have been consumptively used or stored by the transferor in the absence of the transfer, the transfer of which will not injure any legal user of water, and which will not unreasonably affect fish, wildlife, or other instream beneficial uses.

Water Code section 484 also says that temporary transfers of water (as defined) do not prejudice the transferor's future right to the use of the transferred water. This section and section 1725 define consumptively used water as water "which has been consumed by use through evapotranspiration (ET), has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion."

Water Code section 1011(a) allows for the transfer of water produced by water conservation efforts. Water conservation is defined as the use of less water to accomplish the same purpose of use permitted by the existing water right. This section provides that when water appropriated for irrigation is not used because of land fallowing or crop rotation, the reduced usage shall be deemed

water conservation for purposes of this section.

Water Code section 1011(b) provides that water, or the right to the use of water, the use of which has ceased or been reduced as the result of conservation may be sold, leased, exchanged or otherwise transferred, pursuant to any provision of law relating to water transfers.

Water Code sections 1011(a) and (c) also provide that any cessation or reduction in the use of appropriated water, as a result of water conservation efforts, is deemed equivalent to a reasonable and beneficial use of water; and upon completion of any transfer of water based on conservation efforts, the right to the use of the water shall revert to the transferor as if the transfer had not been undertaken.

Water Code section 1725 provides that a permittee or licensee may change the place of use (i.e., transfer) water "if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of [the transfer], would not injure any legal user of the water, and would not unreasonably affect fish, wildlife or other instream beneficial uses. For purposes of this article, 'consumptively used' means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion."

Water Code section 1745.04 provides that a water supplier may contract to transfer, or store as part of a transfer, water, if the water supplier has allocated to users within its service area the water available for the water year and no other user receives less than the amount provided by that allocation or is otherwise unreasonably adversely affected without that water user's consent.

Section 1745.05 provide that a water supplier may transfer water stored by the water supplier, water made available by crop shifting or fallowing, or water made available by "conservation or alternative water supply measures ...". Fallowing transfers are limited to 20% of the water which would have been applied or stored by the water supplier in the absence of a transfer contract entered into in any given hydrological year, unless the agency approves, after reasonable notice and a public hearing, a larger percentage.

The 1992 Central Valley Project Improvement Act also addressed transfers. Section 3405(a) of the CVPIA authorizes all individuals or districts who receive Central Valley Project (CVP) water under water service, repayment, water rights settlement or exchange contracts to transfer all or a portion of the CVP water they receive to any other California water user.

Both state law and federal law have provisions allowing for the use of available capacity in facilities for transfers (Water Code section 1810 ET seq and federal Warren Act).

The application of these statutes and, in particular the interpretation of the "no injury rule", has led the Department of Water Resources (DWR) to develop three concepts which are instrumental in evaluating proposed water transfers and determining the quantity of water available for transfer.

"New water" is water not previously available in the system, created, for example, by reducing irrecoverable losses or flow to unusable water bodies. "New water" results from some action by a seller that provides water to the system which would not be available absent the transfer.

"Real water" is water which, if transferred, does not diminish the supply available for other beneficial uses and which is not derived at the expense of another legal user. "Real water" is not necessarily "new water", but all "new water" must be "real water".

"Paper" water is water that does not create any increase in the water supply, such as water under right but not historically used, or tailwater or return flows which are used downstream.

2. CALFED PROGRAM APPROACH TO WATER TRANSFERS

The CALFED Program is not intending to enter into the business of brokering transfers or banking water as a result of this policy framework, but may purchase water for the Ecosystem Restoration Program. The purpose of the water transfer component is to facilitate and encourage the use of water transfers as a water management tool. The recommendations discussed later in this document will include policies for implementation by CALFED agencies to achieve this objective.

The CALFED water transfer component proposes a policy framework for water transfer rules, baseline data collection, public disclosure, and analysis and monitoring of water transfers, both short and long-term. The element also identifies areas where additional regulation or statutory changes are desirable. Such modifications to existing policy are expected to facilitate the water transfer market, although the annual volume of transfers will still be dependent on locally developed agreements and assurances and the actions of local decision makers.

2.1 Objectives of the Water Transfer Policy Framework

(Expand discussion to introduce objectives and provide context)

1. Promote, encourage and facilitate water transfers, within the framework of the Governor's water policy.
2. Address the institutional, regulatory and assurance issues which need to be resolved to provide for a more effective water transfer system.
3. Address the physical issues which need to be resolved to provide for a more effective water transfer system, and particularly cross-Delta transfers.
4. Encourage transfers that result in overall improvements for water supply reliability, ecosystem health, and water quality (i.e., no significant re-directed impacts).

5. Develop a water transfer system that avoids adverse impacts where possible and that adequately mitigates unavoidable adverse impacts.
6. Promote and encourage uniform rules for transfers using state and federal project facilities and cross Delta conveyance capacity.
7. Promote and encourage the development of standardized rules for transfers based on replacement with groundwater and other conjunctive use type transfers, so that water transfers do not cause degradation of groundwater basins and long-term groundwater levels are sustained or improved.
8. Identify and resolve Delta carriage water and reservoir refill criteria issues.

2.2 Criteria for Policy Development

Development and refinement of the water transfer policy framework will be guided by several criteria that form the basis of California transfer policy:

- Water transfers must be voluntary
- These transaction must result in the transfer of water that truly increases supply, not the transfer of "paper water" such as water that a transferor has never used, or water that would been available for downstream use even in the absence of the transfer.
- Water rights of sellers must not be impaired.
- Transfers must not harm fish and wildlife resources and their habitats.
- Transfers must not cause overdraft or degradation of groundwater basins nor impair correlative rights of overlying landowners.
- Entities receiving transferred water should be required to show that they are making efficient use of existing water supplies.
- Water districts and agencies that hold water rights or contracts to transferred water must have a strong role in determining how transfers are conducted.
- The impact on the fiscal integrity of the districts and on the economy of small agricultural communities cannot be ignored.

(Expand discussion)

3. DEVELOPMENT OF WATER TRANSFER POLICY

(Expand introduction)

3.1 BDAC Policy Direction on Water Transfers

The question of how the CALFED Program should approach water transfer issues was presented to BDAC for policy advice. BDAC concurred that water transfers are an appropriate and useful part of

the CALFED water management strategy. BDAC members also expressed the view that the CALFED program should consider several water transfer issues, including third party impacts, protection of water rights, and the proper roles of water rights holders and water users in the review and approval process for transfers.

3.2 Role and Function of BDAC Water Transfer Work Group

At the May 22, 1997, BDAC Meeting, Chairman Madigan announced the appointment of a BDAC Work Group to consider the policy issues related to transfers and the appropriate role of CALFED in developing a water policy/water market framework. The Work Group is co-chaired by Tib Belza and Roger Strelow.

The Work Group has held nine meetings so far to identify issues, consider case studies, develop solution options and to provide guidance to CALFED staff in the development of recommendations for BDAC and CALFED.

3.3 Role and Function of Transfer Agency Group

The Transfer Agency Group was formed as a sub-group of CALFED agencies representatives. The function of this group is to assist in the identification of water transfer issues and help develop workable solution options.

(Expand discussion briefly)

3.4 Summary of Identified Issues

The issues which have been identified through the Work Group process can be generally sorted into three types:

1. Protection from the adverse impacts of transfers - this category includes such issues as third party impacts, groundwater protection, and environmental protection.
2. Obstacles to a more efficient market - This category includes such issues as the rules for defining transferable water, carriage water and reservoir refill criteria, and permitting and regulatory process issues.
3. Wheeling and access to facilities - These issues deal with the problems of capacity and reliability in conveyance facilities and wheeling costs and charges.

3.5 Process for Development of Solution Options

(Expand discussion to present the process used to develop solution options that are discussed in

Section 5.)

4. SOLUTION OPTIONS FOR PRIORITY ISSUES

At the first BDAC Water Transfer Work Group meeting, in July of 1997, BDAC members and invited participants identified third party impacts and groundwater resources protection as priority issues for consideration. CALFED Staff proposed that the Work Group focus its efforts on developing solution options and, if possible, policy recommendations to BDAC and CALFED regarding these issues.

BDAC Water Transfer Work Group meetings subsequent to the first meeting centered on presentations of case studies which provided "real world" illustrations of transfer projects, third party impacts and groundwater issues.

At the November and December Work Group meetings, participants "brain stormed" solution options and produced a rough list of ideas to be considered in developing policy recommendations for addressing third party impacts and groundwater resource protection. These solution options were sorted, and based on the discussion among Work Group members and meeting participants, staff attempted to refine and prioritize the solution options which had some general measure of support as part of a water transfer policy framework.

Support for these solution options was not unanimous, and in some cases was (and is) tentative or conditional, depending on other aspects of the policy framework, how the policy is implemented, or other components of the long term CALFED program. Nevertheless, it is the opinion of CALFED staff and consultants that these solution options will be supported by a significant number of stakeholders from the Work Group and the public at large.

4.1 Broadly Supported Solution Options

The major themes of the broadly supported solution options are: (1) baseline data collection; (2) neutral party analysis and monitoring of transfers; (3) cumulative impact analysis; (4) public disclosure of data and analysis; and (5) public participation in the transfer review and approval process.

Specifically, the solution options discussed and supported by the Work Group can be described as functions to be performed by an institution or entity as yet undefined. This could mean a new entity of some type or existing entities and agencies.

The functions identified are:

1. Research and development as necessary to establish credible and adequate baseline information on groundwater conditions and groundwater/surface water interaction.

2. Extensive groundwater monitoring programs before, during and after specific water transfer projects.
3. Development of analytic requirements for specific water transfer projects based on the type of water transfer (e.g., intra- basin, inter-district, change in purpose of use, instream or environmental use or out of basin transfer).
4. Adequate, project-specific environmental review and analysis of each water transfer proposal.
5. Basin wide planning goals for surface and groundwater resources.
6. Definition of the range of transfers needed for the long term CALFED solution.
7. Public disclosure of all pertinent information on each water transfer proposal, through a process funded by transfer proponents, and public participation in the review and approval process, including:
 - a. public notice of proposed water transfer projects;
 - b. public disclosure of water transfer proposals and plans, explanation of anticipated impacts and mitigation strategies;
 - c. disclosure and explanation of claims process for parties seeking compensation for damages resulting from water transfers;
 - d. decision making by the parties to the transfer and other legally responsible authorities in and through the public process;
 - e. educational programs for the public regarding water transfer terminology, process and technical information.

4.2 Other Solution Options

In addition to the solution options which were broadly supported by the Work Group, a number of other solution options received support from a significant subset of the Work Group. Again, support for these solution options was often tentative or conditional depending on other factors or aspects of the program.

The solution options or functions which received some level of support among Work Group participants are summarized as follows:

1. Evaluation of water transfers should include analysis of growth inducement in areas receiving transfer water.
2. Evaluation of water transfers should include analysis of local economic benefits and impacts of transfers. This might include fund tracking or establishing accountability for funds received for transferred water.

3. Entities purchasing or receiving transferred water should be required to meet certain efficiency criteria as a condition of obtaining transferred water.
4. Transfer which rely on groundwater substitution should not be approved on the basis of programmatic level environmental impact analysis.
5. Groundwater substitution pumping should be restricted to times when overlying groundwater users (not participating in the transfer) are not pumping for their own use.
6. CALFED should support the separation of the management of the State Water Project from the Department of Water Resources.
7. CALFED should support the levy of a tax on every transfer of water to be used for transfer mitigation projects.

The Work Group also expressed a view on a concept which should not be part of a CALFED water transfer policy framework - the idea that a physical limit should be imposed on the amount of water which a region or political entity may transfer. The sense of the Work Group was that this decision should be made at the local level, provided that the review and approval process is adequate to protect local interests from adverse impacts of the transfer.

5. SUMMARY OF ISSUES AND SOLUTION OPTIONS

(Expand introduction)

5.1 Environmental, Economic and Water Resources Protection

1. Issue: Third Party Impacts

Existing law prohibits transfers which adversely affect other legal users of water. Existing law also generally requires that adverse environmental impacts of transfers be identified and mitigated. However, some impacts, such as those socio-economic impacts to the local economy are not clearly addressed by current laws. Many stakeholders believe that all impacts to a transfer, including those impacted parties other than the buyer or seller (so-called third parties) should be identified so that they can be avoided or mitigated.

Solution Options: Clearinghouse Process; Mitigation measures

2. Issue: Groundwater Resource Protection

Transfers of surface water which is replaced by additional pumping of groundwater can have adverse impacts on the local aquifer and other overlying groundwater users. Existing law does not always provide a clear and accessible process for identification, analysis and mitigation of

these impacts.

Solution Options: Clearinghouse Process; Conjunctive Use Programs; Comprehensive Regional Groundwater Models; Local Control (Ordinances)

3. Issue: Instream Flow (1707) Transfers

Current law does not recognize instream or environmental water rights, other than transfers under Water Code section 1707. Nor is there a uniformly agreed upon method of tracking and accounting for instream transfers over and above a given regulatory baseline flow. Some stakeholders would like to see a more formalized legal status for instream and environmental transfers.

Solution Options: Agreement on uniform tracking and accounting methods; Transfer Registry; Instream and Environmental Water Rights

4. Issue: Environmental Protection in Source Area

While current law (CEQA) generally requires environmental analysis of the impacts of water transfers, one year transfers are exempt from CEQA analysis. This creates a situation where a series of one year transfers may have adverse impacts but not be subject to environmental analysis or mitigation requirements.

Solution Option: Agreement on limited use of programmatic EIR's and more project specific analysis; Mitigation measures

5. Issue: Area of Origin/Watershed Priorities

Many of the primary source areas for water transfers are protected by county of origin or watershed protection priorities, provided in California law. Some stakeholders believe that these protections need to be further strengthened or clarified prior to implementation of long term transfers out of the source area. Alternatively, some believe that in-basin transfers should be given a priority over out of basin transfers.

Solution Option: "Modification" of transferable water rules; permit streamlining for in-basin transfers; additional statutory or constitutional provisions on watershed protection.

6. Issue: Rules/Guidelines for Environmental Water Transfers

Should the rules of environmental or instream water transfers be the same as transfers for other purposes? Under what circumstances should environmental water be available for export from the Delta? How can transfers be developed to provide multiple benefits?

Solution Option: Consistency with transfers for consumptive uses; multiple benefit mechanisms

5.2 Technical, Operational and Administrative Rules

1. Issue: Transferable Water and the "no injury rule"

Generally, transferable water must be "real water" and transfers which would injure another legal user of water are prohibited. However, some stakeholders are concerned that these rules are not always interpreted and applied uniformly by agencies with jurisdiction over transfers.

Solution Options: Agreement on application of rules; interagency process for development of uniform criteria

2. Issue: Operations Criteria and/or Carriage Water Requirements

Historically, water transferred across the Delta has been subject to a carriage water requirement, in some cases as much as 20% to 30% of the transferred quantity, imposed by the State Board at the direction of the SWP or CVP. More recently, the Water Quality Control Plan limits project exports to 35% or 65% of Delta inflow, depending on flow conditions and season. It is generally agreed that transfers should be subject to the same ratio if the ratio is controlling in the Delta. In other circumstances, there may be some disagreement on how carriage water requirements should be calculated and when they should be applied.

Solution Options: Isolated conveyance facility

3. Issue: Reservoir Refill Criteria

SWP and CVP operators are concerned that, without refill criteria, vacated storage space will be filled with water which would otherwise be available to the project. In the absence of the transfer, there would be more water in the system in the subsequent year to meet downstream needs and project obligations (contract deliveries, Delta outflow or water quality requirements). The transfer might also cause the reservoir refill to be delayed, with a possible impact on conditions in the Delta.

Solution Option: Agreement on refill percentage

4. Issue: Permitting Process

Parties to a water transfer often have a very narrow window of time in which a transfer can be physically accomplished. Some have suggested that permitting and regulatory process requirements restrict and impair the ability to accomplish transfers in a timely manner.

Solution Options: Permit streamlining; "pre-approval" of certain types of transfers

5.3 Wheeling and Access to Federal and State Facilities

1. Issue: Priority of transferred water in existing project facilities

Generally there is no reliable capacity in CVP and SWP conveyance or pumping facilities for water transfers, in other than dry years.

Solution Option: Disclosure of transfer windows and risk factors

2. Issue: Priority of transferred water in new facilities

How should new conveyance capacity be allocated as between project water and transferred water?

Solution Option: Dedicated capacity in new facilities

3. Issue: Wheeling Costs

How should conveyance and pumping costs for transferred water be calculated?

Solution Option: Agreement on recovery of capital costs of facilities

6. INTEGRATION OF SOLUTION OPTIONS INTO A POLICY FRAMEWORK

(This part will describe how various solution options are integrated to address multiple issues and create a cohesive water transfer policy framework.)

A. Some issues involve the need to provide a certain level of protection from the effects of a water transfer market: e.g. third party impacts, protection of groundwater resources, protection of water rights and area of origin priorities, and environmental protection. The clearinghouse may provide a means of addressing these issues. [Refer to clearinghouse discussion paper.]

B. Some issues involve real or perceived impediments to the efficient operation of the water transfer market: e.g., different interpretations of transferable water; carriage water and reservoir refill; wheeling costs and access to facilities; the regulatory, permitting and approval processes. One aspect of the CALFED policy framework may be that the responsible agencies should provide additional disclosure of their calculations for determination of transferable water, carriage water and reservoir refill criteria. Another might be disclosure of the transfer windows and risk curves for moving transfer water across the Delta.

C. Some issues deal with problems related to water transfers for instream or other

environmental purposes. The CALFED water transfer policy framework may include proposals for accounting and tracking of instream transfers, or possible the creation of instream or environmental water rights.

D. A fourth component of the policy framework would be recommendations for any legislative changes necessary, for example, to set up and provide funding for the clearinghouse or to provide accounting or registry mechanisms for environmental water transfers.)

7. IMPLEMENTATION AND ASSURANCE ISSUES

(This text will address assurance and implementation needs for the water transfers element)

A. Do we need changes in the scope of regulatory authority over transfers? Transfers often require approvals or permits at several levels: the water agency, the county, the federal or state project operator, the State Water Resources Control Board. Some transfers are exempt from CEQA. Others are not. Some transfer are subject to the jurisdiction of the State Board. Others are not.

- Should State Board jurisdiction over water transfers be expanded to include transfer of pre-1914 water?

- What is the appropriate role of DWR and USBR in approving transfers (separate from issue of wheeling and access to project facilities)?

- Should some types of transfers be exempt from CEQA analysis. If so, which ones?

B. Who pays for transfer capacity in new facilities? How are costs recovered?

C. If legislation is needed, what is the process for negotiation of new laws or regulations?

D. What is the time frame for implementation? Is there a staging or phasing aspect to any of this? What is the linkage between new facilities and transfers? Is there a linkage between transfers and ERP actions?

DRAFT - Revised June 3, 1998

Water Transfers Clearinghouse - Discussion Paper

A. Introduction

One of the major issue areas identified and discussed by the BDAC Water Transfers Work Group is protection of source areas from the adverse impacts of water transfers. Two specific issues in this area are: third party socio-economic and source area groundwater resource impacts.

Once a buyer and seller have reached agreement on a proposed water transfer, they are generally required to comply with the applicable regulatory and permitting procedures. This can involve compliance with CEQA requirements, and may require the transfer proponents to obtain one or more approvals from local agencies such as the water district, or if groundwater is involved, the county. In some cases, the transfer may be subject to the jurisdiction of the State Water Resources Control Board; and where use of federal or state owned facilities is involved, the consent of the Department of Water Resources or the Bureau of Reclamation may be required.

In spite of this already complex regulatory and permitting process for water transfers, in some cases, stakeholders believe that decisions are made on the basis of incomplete or inadequate information, or that there is insufficient opportunity for public involvement in the transfer review process. The consequence, some believe, is that source area protection (particularly third party impacts and groundwater issues) is sometimes inadequate.

The challenge for the Work Group and the CALFED Program is to provide a way to address these issues which is consistent with Program objectives and solution principles. One tool which is under consideration is development of a process for additional public information and involvement in water transfer reviews, and to assist the local decision making agencies with analysis of the benefits and adverse impacts of transfers -- short term and long term, project specific and cumulative.

This process is referred to as an "information clearinghouse". It would not require or result in any change in existing regulatory authority or water rights law, nor would the information clearinghouse be regulatory in nature. It would provide expertise, resources, advice and recommendations on water transfers to local agencies and other interested parties, so that decisions could be made with all parties in possession of complete and accurate information.

The clearinghouse would not function as a market broker, nor would the clearinghouse operate as a water bank. In other words, the clearinghouse would not directly participate in water transfer transactions.

During the Work Group discussions, it was noted that many of the functions suggested for a clearinghouse are already being performed by the Department of Water Resources, the Bureau of

Reclamation, or the local agencies involved in a particular transfer. Some stakeholders believe that these functions could be better performed by a "neutral party", rather than an agency which is involved in water transfer transactions as a buyer or seller, broker, or approving agency. Others believe that it would not be productive for a clearinghouse to duplicate existing agency activities. This question has been raised in relation to Section C below, regarding who performs the clearinghouse functions.

B. Possible functions of a clearinghouse

1. Collect, develop and analyze baseline data on existing conditions, particularly surface water supplies (source, type and usage), groundwater levels and quality, groundwater recharge rates, groundwater - surface water relationships, and streamflow accretion and depletion rates.
2. Make all collected data available to the public.
3. Collect information on proposed transfers of all types (except intra-District transfers).
4. Provide public notice on all proposed water transfers and provide a forum (if not otherwise provided) for public discussion and comment on proposed transfers.
5. Provide technical analysis on groundwater - surface water interface. Eventually develop a model (or models) on the groundwater - surface relationship in the Central Valley.
6. Provide advice and assistance to local decision makers on technical analysis, environmental impacts and economic impacts of proposed transfers. For groundwater transfers, this would include, for example, modeling data on impacts to groundwater or groundwater quality, affects on streamflow accretions and depletion, and estimates of recharge times. For surface water transfers, it might include analysis of water quality impacts and third party economic impacts. This could include financial assistance if funds were available.
7. Provide cumulative impact analysis of transfers on a stream or watershed basis.
8. Provide recommendations to decision makers on ways to avoid, minimize or mitigate environmental or economic impacts.
9. Develop and administer monitoring programs to determine impacts of transfers on groundwater conditions, water quality, agricultural production, environmental conditions, etc.
10. The clearinghouse could also provide, upon request by the local decision makers, advice or recommendations on the level of analysis desirable or useful for different types or priorities of transfers. Expertise housed within the clearinghouse may be available to local interests (perhaps on a contract basis) to provide assistance with understanding the analysis results.

C. Who performs the clearinghouse functions?

There are several ways these functions can be performed. Conceptually, the clearinghouse can be thought of as an institution or entity which performs the functions described above. Thus, an existing agency might perform the functions or a new entity might be created specifically for their performance. Another concept is that the clearinghouse is an institution or entity which merely ensures that someone else actually performs the appropriate functions. Alternatively, the clearinghouse functions could be performed by existing agencies as part of their current role in the water transfer process.

A related issue is the geographic scope of the clearinghouse function. The clearinghouse could operate on a local or regional basis (river or watershed), or it could operate on a statewide basis, on something in between. Based on the discussions thus far in the Work Group, there appears to be support for the formation of one clearinghouse entity whose scope would be at least that of the Central Valley and possibly statewide.

Four possible scenarios for the performance of clearinghouse functions are described below:

1. One of the concerns repeatedly expressed by some stakeholders is that DWR and USBR could not function effectively as a clearinghouse due to their obligations to their contractors. While some have expressed reluctance at the idea of increasing the scope of the State Water Resources Control Board jurisdiction, it may be logical for the State Board to assume the responsibility for these functions. This would NOT necessarily mean any expansion of the Boards' water rights permitting authority. The State Board could collect, analyze and disseminate information and advice regarding transfers of all types, without assuming any regulatory jurisdiction over transfers beyond that which is has now.
2. Another possibility is the formation of a joint powers authority of local district and counties in source water areas. A joint powers authority (JPA) is the voluntary association of agencies with a delegation of power to the JPA to perform certain agreed upon tasks or functions.
3. The clearinghouse functions could be performed by a non-governmental entity, such as the University of California, or a specially formed private, not for profit corporation, or by a "neutral" agency, such as the Natural Resources Conservation Service (NRCS). Local agencies could contract with this entity for its services.
4. The clearinghouse functions could be performed by local agencies, without formation of a new entity or a state agency. In this scenario, the clearinghouse functions are simply incorporated into the existing review, analysis and approval processes of the agencies (water districts and/or counties) which have decision making authority with regard to a specific transfer.

D. Tentative proposal

For purpose of further discussions, the Work Group has considered the following scenario. This is in the nature of a "straw" proposal and does not represent a consensus view:

As part of the CALFED legislative package, CALFED would recommend state legislation to create the California Water Transfers Clearinghouse.

The Clearinghouse administrative function would be housed in the State Water Resources Control Board, but separate from the Division of Water Rights. The State Board would contract the technical work, such as data collection and analysis and groundwater-surface water modeling. Contracts could be established with the University of California and/or the Natural Resources Conservation Service and/or the U.S. Geological Survey and/or another neutral party with appropriate expertise.

The legislation would require that the proponents of a water transfer meeting specified criteria would give notice at a specified time to the Clearinghouse. The notice would include specified information about the proposed transfer. The Clearinghouse would then be responsible for ensuring that the notice of a proposed transfer was provided to all interested parties and that public process requirements were satisfied.

The Clearinghouse technical function would provide baseline data to the transfer proponents, responsible decision making agencies and to the public, for use in the environmental analysis of the proposed transfer. The Clearinghouse could also provide economic impact and cumulative impact assessment.

If required by decision making agencies, the Clearinghouse could also provide recommendations on conditions or mitigation measures for the proposed transfer and/or advice regarding ways to get additional environmental or water quality benefits from the proposed transfer.

E. Funding options

1. Initially, funding would have to be provided by the State, as part of the CALFED program budget.
2. For long term funding, one option is that a surcharge could be added to transfers to cover the expense of clearinghouse operations and administration (i.e, buyers or sellers of transferred water would pay).
3. Alternatively, long term funding could be provided through a broader based revenue sources, such as annual state appropriations or bond revenues or a general water use fee imposed and collected by the State Board.

4. Another variation is that the Clearinghouse could be funded by a combination of public money (bond revenues) and fees assessed on transfer proponents by the State Board for the costs incurred in the actual performance of the data collection and analysis.

F. Criteria for Transfers to be Submitted to Clearinghouse

Generally, all transfers (other than intra-District transfers) would be reported to the clearinghouse. The level of analysis and public scrutiny of a transfer may vary depending on the type of transfer. For example, an short term, inter-district transfer within the same watershed or basin, for the same purpose of use, may require a very low level of analysis and public review. On the other hand, a long term transfer from the Sacramento Valley to a place of use south of the Delta, for a different purpose of use, may require extensive analysis and public review.

In its first year or two of implementation, the clearinghouse may be limited, as a practical matter, to collection and public disclosure of basic information on proposed water transfers, and to collection and organization of the baseline data it will use to provide local decision makers the information they need to make decisions.

During this initial period, the clearinghouse could develop the criteria on what type of analysis, for different types of transfers, would be most useful to decision makers. The premise of such criteria might be that transfers with the potential for high levels of impact or public controversy would be subject to greater analytic scrutiny, while local, short term transfers or low impact transfers would not need extensive analysis.

G. Assurances for the Use of the Clearinghouse

How does CALFED ensure that transfer proponents will in fact use the clearinghouse and provide it with the information it will need to perform the desired analysis? The most direct approach to assuring that the clearinghouse process is used would be for the CALFED member agencies most directly involved with water transfers (State Board, DWR, USBR) to require, as a condition of transfer approval, that transfers be submitted to the clearinghouse.